IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 11 of 2002
in
MISC.CIVIL APPLICATION No 33 of 2000

with

CIVIL APPLICATION No 52 of 2002
with
LETTERS PATENT APPEAL (STAMP) and/or
O.J. APPEAL No 1369 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE KSHITIJ R.VYAS Sd/-
and
Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

1 & 2 YES; 3 to 5 NO

JAISU SHIPPING CO. PVT. LTD.

Versus

M.V. ASEAN JADE

Appearance:
MR DD VYAS for M/S.VYAS ASSOCIATES for Appellant
MR AS VAKIL with MR PS PRATAP for Respondent
.....for Respondent No.2 and 3

CORAM : MR.JUSTICE KSHITIJ R.VYAS

and

MR.JUSTICE D.H.WAGHELA

Date of decision: 27/12/2002

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.H.WAGHELA)

1. This appeal is preferred from the judgment and order dated 27.2.2002 of the learned single Judge in Miscellaneous Civil Application No.33 of 2002 in Admiralty Suit No.10 of 2000, whereby, the application of the respondent herein was allowed and the appellant herein (the original plaintiff) was ordered to pay Rs.2,70,000/- per day for detention of the vessel for eight days. By consent and at the request of the learned counsel, the appeal was taken up for final hearing at the admission stage. The appellant also filed an appeal from the earlier order dated 30.6.2000 vacating the order of the vessel's arrest in which the reasons were to be given afterwards. It was stated at the Bar that the impugned judgment containing the reasons and final order being challenged in this appeal on all the available grounds, that former appeal lying in the Registry under office-objections since August 2000 as Letters Patent Appeal (Stamp) No.1369 of 2000 as also O.J.Appeal (Stamp) No.1369 of 2000 would not survive and shall no more be required to be registered.

2. It must be noted at the outset that the original Admiralty Suit No.10 of 2000 is pending and the opponent herein was not a party to that suit. However, on the allegations and premises that the opponent herein, i.e. the ship M.V.ASEAN JADE, was a sister-ship of the vessel M.V. ASEAN CRYSTAL (also known as ASEAN MARINER), whose owners were the defendants in the suit, and that the former ship was likely to sail out of the Port of Kandla on 26.7.2000, an application being Miscellaneous Civil Application No.24 of 2000, was filed in Admiralty Suit No.10 of 2000 and, by the order dated 23.6.2000, an ex parte order for arrest of the former ship was obtained.

The admiralty suit appears to have been filed on 8.6.2000 and, at the time of initial hearing on 19.6.2000 when notice returnable on 3.7.2000 was ordered to be issued, amendment was also granted so as to increase the amount of claim from US $ 8,79,190.86 to US $ 15,17,770 along with interest @ 18% as also an amount of Rs.30,000/- per day by way of damages from the date of the suit till the disposal of the suit. It also appears from the record that the appellant herein had filed another application

being Miscellaneous Civil Application No.23 of 2000 with the prayers to order the defendants in the suit to transfer the ASEAN CRYSTAL or any other vessels or other properties or to give bank security for the suit-claim and that application was never pressed for any order although notice was also issued therein and made returnable on 3.7.2000. Thus, in short, after increasing the amount of claim by way of amendment and even during the pendency of an application for securing the further claim, (the owner of ASEAN CRYSTAL having already provided the security by a Letter of Indemnity to the extent of US $ 1.2 million against the original claim of US $ 8,29,190.86) the application for arrest of M.V. ASEAN JADE was made and an ex parte order of arrest was obtained on 23.6.2000 which was admittedly served only on 27.6.2000 when M.V. ASEAN JADE was about to sail. Being aggrieved by the order of arrest, the respondents herein filed Miscellaneous Civil Application No.33 of 2000 in which the impugned judgment was delivered after filing of affidavits and counter-affidavits of the parties and written and oral arguments spread over a period of about

one-and-half years. The order of arrest was, however, vacated earlier on 30.6.2000 and the hearing that ensued related to the amount of damages to be awarded in view of allegedly unlawful arrest of the ship M.V. ASEAN JADE.

3. Assailing the impugned judgment of the learned single Judge, the learned senior counsel Mr.D.D.Vyas, appearing for the appellant, submitted that the damages could have been awarded only after leading of evidence and enquiry into the proper amount of damages and such enquiry could not have been carried out in a summary manner as was done by the learned single Judge. He also submitted that the amount of damages claimed by the respondent was merely based upon ipse dixit of the interested party and could not have been the basis in absence of any legal evidence which could have been and ought to have been led. He also submitted that the ship ASEAN JADE was in any case not bound to sail on 27.6.2000 and its sailing might have been delayed for any other reason. He also made a grievance that the contentions and submissions of the appellant were not fully appreciated and dealt with by the learned single Judge while granting the prayer for damages, as also in vacating the order of arrest made in Miscellaneous Civil Application No.24 of 2000 referred hereinabove.

4. Learned counsel Mr.A.S.Vakil, appearing for the respondent, fairly conceded at the outset that, in view of the amount of damages having been calculated on per

day basis and for eight days and in view of the fact that

the order of arrest was served only on 27.6.2000 and it was vacated on 30.6.2000 and the ship had actually sailed on 1.7.2000, the detention of the ship was for a period of five days at the most and accordingly the damages on per day basis could be reduced to that extent. He, however, emphatically submitted that the averments made by the applicant (appellant) for arrest were palpably false and the court was misled into believing, prima facie, that the ship ASEAN JADE and ASEAN CRYSTAL were sister-ships and under the common ownership. He supported the judgment insofar as the procedure followed by the court was in tune with Rule 367 of the Rules of High Court of Bombay (Original Side), 1957 contained in Part I, Chapter XXI as applicable to the High Court of Gujarat under Section 32 of the Bombay Reorganization Act, 1960.

5. The facts emerging from the reading of the record of Miscellaneous Civil Application No.33 of 2000 are that ASEAN JADE had approached the Court with a prayer to set aside ex parte order of its arrest alleging fraudulent misrepresentation and suppression of facts and documents with the intention of causing it wrongful loss. The alleged claim for damage suffered by the original plaintiff due to drifting of M.V.ASEAN CRYSTAL and collision with "KAMAL VII", a floating dry-dock owned by the plaintiff was already covered for an amount of US $ 1.2 million and secured by a letter of undertaking issued by the Protection of Indemnity (P&I) Club in Singapore on 27.5.1999 when further proceedings were stayed in the

High Court of the Republic of Singapore in Admiralty in Rem No.336 of 1999 in favour of the courts in India. About eight months thereafter, action in personam in the form of the original Admiralty Suit No.10 of 2000 came to be filed with the same claim of US $ 879,190.86 without ASEAN JADE or its owners being made a party to the suit. After amending and increasing the claim amount to exceed US $ 1.5 million and obtaining on 23.6.2000 an ex parte order of arrest of M.V. ASEAN JADE alleging it to be a sister-ship, the order was served on 27.6.2000 when it was about to sail out of the Port of Kandla. M.V. ASEAN JADE was loaded with a cargo of 13,200 MTs. of agricultural products for export to China. The cargo of agricultural products on board was perishable cargo valued at US $ 2.75 million. The detention of ASEAN JADE was alleged to be causing a loss of US $ 6000 per day on account of daily costs of maintenance and crew and additional daily port expenses, agency charges, legal

costs, management fees etc. Therefore, the applicant exhorted the court to summarily invoke the undertaking furnished by the plaintiff so as to pay damages to the applicant @ Rs.2,70,000/- for each day of detention and to vacate the ex parte order of injunction and arrest. Upon such application dated 29.6.2000 and after hearing the parties, the Court set aside on 30.6.2000 the order of arrest passed on 23.6.2000 in Miscellaneous Civil Application No.24 of 2000. The applicant had, along with his application on affidavit filed the documents showing that the owners of ASEAN JADE and ASEAN CRYSTAL were different and even located in different countries and

hence both could not be considered as sister-ships. It was also stated that the letter of guarantee accepted by the original plaintiff as security in respect of its alleged claim clearly stated that it was provided to the plaintiff in consideration of the plaintiff refraining from arresting the vessel ASEAN CRYSTAL (now named ASEAN MARINER) or any other vessel, asset or property in the same or associated ownership, management, possession or control in connection with the plaintiff's alleged claim for damages as a result of the alleged collision between ASEAN CRYSTAL and KAMAL VII.

5.1 After the aforesaid order dated 30.6.2000 vacating the order of arrest, the appellant herein filed an affidavit to aver that the claim in the suit had exceeded the letter of guarantee of US $ 1.2 million; that allegation of the daily expenses and costs due to detention to the tune of US $ 6000 was denied and the allegations of suppression of fact, malicious arrest and perpetuation of fraud were also denied. By a further affidavit it was stated that the directors of Universal Maritime Ship Holding Ltd. and Glori Ship Management Pvt. Ltd. were the owners of ASEAN CRYSTAL; that Golden Century Maritime Pvt. Ltd. was a subsidiary of Glori Ship Management Pvt. Ltd. which was also managing ASEAN JADE; that the address of Glory Ship Management Pvt. Ltd. and Golden Century Maritime Pvt. Ltd. was same and were having common staff, common telephones and both companies had common shareholders. It was specifically averred that if the corporate veil was lifted, both the companies were same and both ships were the ships of sister-concerns. The denial of the claim for damages was reiterated. Thereafter, by an affidavit dated 11.7.2000 of the Constituted Attorney of Golden Century Maritime Pvt. Ltd., owners of M.V. ASEAN JADE, the above allegations made on behalf of the original plaintiff were denied and it was reasserted that the vessel was ready to sail on 27.6.2000 when permission to sail was denied due

to the order of arrest. And, it was only in the afternoon of the 1st of July, 2000 that the vessel could sail at about 2048 hours after obtaining Port and Customs permission pursuant to the order dated 30.6.2000. It was also specifically averred that the daily loss of US $ 3000 was evident from the demurrage rate under the charter party contract under which the vessel was loaded. It was also stated that the higher rate must apply where the detention was by a third party since additional losses on account of port charges, agency fees, management fees, communication expenses etc. had to be taken into account. In such circumstances, daily loss of US $ 6000 was claimed. It was also alleged that the plaintiff, after being aware of ASEAN JADE having arrived at Kandla Port on 14.6.2000, had waited until 23.6.2000 for an order of arrest and that order was served on 27.6.2000 without serving copies of the plaint and the miscellaneous civil application and thus the plaintiff had deliberately delayed execution of the warrant of arrest till the last minute so as to cause maximum loss. The affidavit was supported by copies of the Charter Party Contract evidencing the condition of demurrage @ US $ 3000. The appellant herein did not file any reply to the said last affidavit even as the hearing continued till 22.2.2002 according to para 4.1 of the impugned judgment.

5.3 The inescapable conclusions from the above record of facts are :-

(a) That the vessels MV ASEAN JADE and MV ASEAN CYSTAL were not sister-ships under the same ownership. Admittedly, the relationship between the two owners of the two ships in question could not be established unless the corporate veil was lifted and no reason was placed on record or made out to lift the corporate veil;

(b) That the details of the losses caused due to detention of MV ASEAN JADE under the order of arrest were stated on oath with the support of documentary evidence and the same were not denied after the last affidavit dated 11.7.2000;

(c) That issues of propriety of the procedure and jurisdiction for awarding damages were not specifically raised by the appellant in either of their affidavits filed in reply to the application for damages;

(d) That an undertaking to pay damages/ compensation

in the event of the party affected by interim relief as envisaged in the applicable Rule 367 of the Rules of the High Court of Bombay (Original Side), 1957 was never filed by the appellant;

(e) That the plaintiff had not pressed the separate application filed for additional security from the original defendants; and

(f) That the application for arrest of ASEAN JADE as a sister-ship of ASEAN CRYSTAL was not moved in time and the ex-parte order of arrest was obtained and served in such manner that the ASEAN JADE could not have the time to have the order of arrest vacated without detention after being ready to sail.

5.4 It was in such circumstances that the impugned judgment and order, containing reasons for the earlier order dated 30.6.2000 and awarding damages, was made after extensive hearings spread over more than one year.

6. In the above background of facts and the contentions calling into question the jurisdiction and procedure, it would be advantageous to refer to the relevant observations made by Their Lordships in M.V. ELISABETH v. HARWAN INVESTMENT & TRADING PVT. LTD., GOA [AIR 1993 SC 1014], which is an erudite treatise on the Maritime Law in India, although the nature of dispute in that case was different. The abstract of the relevant observations may be extracted as under:

" Because of the unlimited civil jurisdiction already vested in the High Courts, they were declared to be Colonial Courts of Admiralty having the same jurisdiction in extent and quality as was vested in the High Court of England by any statute or custom under the provisions of the Colonial Courts of Admiralty Act, 1890 read with the Colonial Courts of Admiralty (India) Act, 1891. The High Courts were declared to be competent to regulate their procedure and practice in exercise of admiralty jurisdiction in accordance with the Rules made in that behalf. There was, therefore, neither reason nor logic in imposing a fetter on the jurisdiction of the High Courts by limiting it to the provisions of an imperial statute of 1861 and freezing any further growth of jurisdiction. (para 25).

.....As the admiralty jurisdiction of the English High Courts expanded with the progress of the legislation, and with the repeal of the earlier statutes, including in substance the Admiralty Courts Acts of 1840 and 1861, it would have been reasonable and rational to

attribute to the Indian High Courts a corresponding growth and expansion of admiralty jurisdiction during the pre-independence era. (para 26).

Describing the unified court structure in England, Jackson sums up:

'The Admiralty Court developed independently, having its own battle with common law courts over jurisdictional boundaries. During the 18th and early 19th centuries, its influence and power decreased, but through statutes of 1840 and 1861, the court received a firm foundation on which it has built since. It came in from the cold into the general union of courts in 1873-5 and is now integrated into the High Court, being a branch of the Queen's Bench Division....

Once under the umbrella of the unified court structure, common law and equitable principles became directly available in the Admiralty Court. No longer need claimants have to seek these elsewhere and no longer did jurisdictional boundaries necessarily indicate the availability of substantive rights and remedies'. (para 43).

'.....In admiralty the vessel has a juridical personality, an almost corporate capacity, having not only rights but liabilities (sometimes distinct from those of the owner) which may be enforced by process and decree against the vessel binding upon all interested in her and conclusive upon the world, for admiralty in appropriate cases administers remedies in rem, i.e. against the property, as well as remedies in personam, i.e. against the party personally (Benedict, The Law of American Admiralty, 6th ed. Vol.I p.3). (para 45).

Admiralty Law confers upon the claimant a right in rem to proceed against the ship or cargo as distinguished from a right in personam to

proceed against the owner. The arrest of the ship is regarded as a mere procedure to obtain security to satisfy judgment....(para 46).

.....An action in rem lies in the English High Court in respect of matters regulated by the Supreme Court Act, 1981 and in relation to a number of claims the jurisdiction can be invoked not only against the offending ship in question but also against a "sister-ship" i.e. a ship in the same beneficial ownership as the ship in regard to which the claim arose. (para 47).

A ship may be arrested (i) to acquire jurisdiction; or (ii) to obtain security for satisfaction of the claim when decreed; or (iii)

in execution of a decree. In the first two cases, the court has the discretion to insist upon security being furnished by the plaintiff to compensate the defendant in the event of it being found that the arrest was wrongful and was sought and obtained maliciously or in bad faith. The claimant is liable in damages for wrongful arrest. This practice of insisting upon security being furnished by the party seeking arrest of the ship is followed in the United States, Japan and other countries. The reason for the rule is that a wrongful arrest can cause irreparable loss and damages to the shipowner; and he should in that event be compensated by the arresting party. (para 49).

It is by means of an action in rem that the arrest of a particular ship is secured by the plaintiff. .....The arrest of the foreign ship by means of an action in rem is thus a means of assuming jurisdiction by the competent court. (para 57).

The real purpose of arrest in both the English and the Civil Law system is to obtain security as a guarantee for satisfaction of the decree, although arrest in England is the basis of assumption of jurisdiction, unless the owner has submitted to jurisdiction. (para 59).

It may not be correct to say that the admiralty jurisdiction of the English Courts is dependent entirely on statutes. .....Remedy for

enforcement of maritime liens was available prior to the introduction of statutes. .....By statutory intervention the court structure came to be unified and substantive rights and remedies became available without regard to jurisdictional boundaries. Although statutes now control the field, much of the admiralty law is rooted in judicial decisions and influenced by the impact of civil law, common law and equity. .....Any attempt to confine admiralty or maritime law within the bounds of statutes is not only unrealistic but incorrect. Although this branch of the law in England is now governed generally by statutes, the law in all its aspects can be understood only by viewing it in the context of decisions of courts and the general principles which are common to common law and equity. (paras 61 and 62).

.....The right to seize a vessel by legal process is therefore partly based on rights conferred by general maritime law and partly upon the right to take legal action of this nature granted by statute.....(para 63).

In tracing the history of admiralty law in India, it is likewise misleading and incorrect to confine it to statutes. Statutes have been codifications of rules of law as developed by usage, practice and custom. As stated by Westropp,C.J. of the Bombay High Court in Bardot v. The American Ship or Vessel 'Augusta' (1873) 10 Bombay High Court Reports, 110 at p.113 :-

"...If we have jurisdiction to entertain this suit, it must be sought for in the general maritime law administered by Courts of Admiralty.....We must hold it to be quite clear that the Statutes 3 & 4 Vict.c.65 (1840), 24 Vict.c 10 (1861), and 26 & 27 Vict.c.24 (1863), do not increase or in any wise affect our jurisdiction either in Admiralty or Vice-Admiralty, and that if we have jurisdiction to entertain this cause, that jurisdiction must be sought for outside those Statutes. (page 64).

Where statutes are silent and remedy has to be sought by recourse to basic principles, it is the duty of the court to devise procedural

rules by analogy and expediency. Action in rem is a practical procedural device developed by courts with a view to rendering justice in accordance with substantive law not only in cases of collision and salvage, but also in cases of

other maritime liens and claims arising by reason of breach of contract for the hire of vessels or the carriage of goods or other maritime transactions, or tortious acts.....(para 65).

It is likewise within the competence of the appropriate Indian Courts to deal, in accordance with the general principles of maritime law and the applicable provisions of statutory law, with all persons and things found within their jurisdiction. The power of the court is plenary and unlimited unless it is expressly or by necessary implication curtailed. Absent such curtailment of jurisdiction, all remedies which are available to the courts to administer justice are available to a claimant against a foreign ship and its owner found within the jurisdiction of the concerned High Court. This power of the court to render justice must necessarily include the power to make interlocutory orders for arrest and attachment before judgment. (para 66).

The High Courts in India are superior courts of record. They have original and appellate jurisdiction. They have inherent and plenary powers. Unless expressly or impliedly barred, and subject to the appellate or

discretionary jurisdiction of this Court (Supreme Court), the High Courts have unlimited jurisdiction, including the jurisdiction to determine their own powers. (para 67).

In equating the admiralty jurisdiction of the Indian High Court to that of the English High Court, the Colonial Court of Admiralty Act, 1890 significantly refers to the admiralty jurisdiction of the High Court in England "whether existing by virtue of any statute or otherwise". This is an enabling statute, and not a statute of limitation of power. It aids, and does not fetter, the growth of jurisdiction. There is no reason why the words 'statute or otherwise' should be so construed as to exclude

the various sources from which the admiralty jurisdiction in England developed. Apart from statutes, the powers of that Court, as seen above, were derived from custom and practice and the principles developed by common law and equity as well as by the generally recognized principles of civil law developed and practised in Europe. There is no reason, as rightly stated by Westropp C.J. of the Bombay High Court in Bardot (1873 (10) Bom. HCR 110), why the expression 'statute or otherwise' should be so construed as to exclude all these vast areas of legal principles which enriched and strengthened the maritime laws of England. Likewise, there is no reason why

those principles should also not be drawn upon to enrich and strengthen the jurisprudence of this country, even if the jurisdiction of our courts were to be, by compulsions of history, considered to be curtailed and dovetailed to the colonial past- a proposition which is neither correct nor consistent with our status as a sovereign republic. It is time to take a fresh look at the old precedents. (para 70).

.....India has also not adopted the International Convention relating to the Arrest of Seagoing Ships, Brussels Conventions of 1952 on civil and penal jurisdiction in matters of collision; nor the Brussels Conventions of 1926 and 1967 relating to maritime liens and mortgages. India seems to be lagging behind many other countries in ratifying and adopting the beneficial provisions of various conventions intended to facilitate international trade. Although these conventions have not been adopted by legislation, the principles incorporated in the conventions are themselves derived from the common law of nations as embodying the felt necessities of international trade and are as such part of the common law of India and applicable for the enforcement of maritime claims against foreign ships. (para 77).

.....The procedural provisions are but tools for enforcement of substantive rights which are rooted in general principles of law, apart from statutes, and for the enforcement of which a party aggrieved has a right to invoke the inherent jurisdiction of a superior court. (para 80).

No Indian statute defines a maritime claim. The Supreme Court Act, 1981 of England has catalogued maritime claims with reference to the unified rules adopted by the Brussels Convention of 1952 on the Arrest of Seagoing Ships. Although India has not adopted the various Brussels Conventions, the provisions of these Conventions are the result of international unification and development of the maritime laws of the world, and can, therefore, be regarded as the international common law or transnational law rooted in and evolved out of the general principles of national laws, which, in the absence of specific statutory provisions, can be adopted and adapted by courts to supplement and complement national statutes on the subject. In the absence of a general maritime code, these principles aid the Courts in filling up the lacunae in the Merchant Shipping Act and other enactments concerning shipping. "Procedure is but a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities." (para 85).

The judicial power of this country, which is an aspect of national sovereignty, is vested in the people and is articulated in the provisions of the Constitution and the laws and is exercised by courts empowered to exercise it. It is absurd to confine that power to the provisions of imperial statutes of a bygone age. Access to court which is an important right vested in every citizen implies the existence of the power of the Court to render justice according to law. Where statute is silent and judicial intervention is required, Courts strive to redress grievances according to what is perceived to be principles of justice, equity and goods conscience. (para 87).

In the words of Chief Justice Marshall:-

"The jurisdiction of courts is a branch of that which is possessed by the nation as an independent sovereign power. The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself....." (para 88)

Per Honourable Mr. Justice R.M.Sahai (Concurring):-

".....Statutes of 1840 and 1861 were not exhaustive and English courts could have cognizance for various wrongs either in tort or contract. Therefore, when colonial courts were conferred jurisdiction it was not restricted or confined to statutes, as the power was being conferred on High Courts which were, then and even now, not only courts of unlimited civil jurisdiction but higher courts possessed of every jurisdiction which was not expressly or impliedly conferred on other courts. The word 'otherwise' literally means in a different way. Effect of its use in 1890 Act in law, was to confer not only statutory jurisdiction possessed of by English courts but all that which was being exercised or was capable of being exercised either under custom and practice or for sake of equity and justice. .....Viewed in the background of enactment of 1890 it would be too artificial to confine the exercise of power by the High Courts in Admiralty to what was contained in 1861 Act. Even otherwise for deciding the jurisdiction exercised by the High Courts in India founded on jurisdiction exercised by the High Court of England, it is not necessary to be governed by the decision given by English courts. Law develops by pragmatic approach to problems arising under an Act and not by abdication or surrender. 1890 Act is an unusual piece of legislation expansive in scope, wider in

outlook, opening out the wings of jurisdiction rather than closing in. Its authority and power to exercise jurisdiction was linked with power exercised by the High Court in England, the width of which was not confined to statute but went deep into custom, practice, necessity, and even exigency. (para 100)".

(underlines are ours)

6.1 The above observations of the Supreme Court fortifies our view that the powers of the Indian High Courts conferred with admiralty jurisdiction grew and developed alongside their British counterparts and Gujarat High Court as the successor to the Chartered High Court of Bombay has all the powers to uphold and enforce common law rights and afford equitable remedies to do

justice in exercise of its original admiralty jurisdiction. Sub-section (2) of Section 2 of the Colonial Courts of Admiralty Act, 1890 reads as under:-

> "Sec. 2 (2): The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that Court to international law and the comity of nations."

Sub-section (1) of Section 7 reads as under:-

> "Sec. 7 (1): Rules of Court for regulating the procedure and practice (including fees and costs) in a Court in a British possession in the exercise of the jurisdiction conferred by this Act, whether original or appellate, may be made by the same authority and in the same manner as rules touching the practice, procedure, fees, and costs in the said Court in the exercise of its ordinary civil jurisdiction respectively are made."

7. By virtue of Article 225 of the Constitution, the jurisdiction of the High Court and the respective powers of the Judges thereof in relation to administration of justice in the Court is the same as immediately before the commencement of the Constitution. Under Section 32 of the Bombay Reorganization Act, 1960, subject to the provisions of Part IV of that Act, the law in force immediately before the appointed day with respect to practice and procedure in the High Court of Bombay, shall, with necessary modifications, apply in relation to the High Court of Gujarat and, accordingly, the High Court of Gujarat is having all such powers to make rules and orders with respect to the practice and procedures as were immediately before the appointed day exercisable by the High Court of Bombay. And, the Gujarat High Court

having not repealed the Original Side Rules of the Bombay High Court, the Original Side Rules contained in Part I apply in the facts of this case; including Rule 367 as under:-

> "Rule 367: Undertaking to pay damages to be

given by party applying for same:

A party to whom interim relief has been granted shall, before the order is issued unless the Judge otherwise directs, give an undertaking in writing, or through his Advocate to pay such sum by way of damages as the Court may award as compensation in the event of a party affected sustaining prejudice by such order".

8. The original Act for establishing High Courts of Judicature in India, by its Clause 2, inter alia, constituted the High Court of Bombay and conferred admiralty and vice-admiralty jurisdiction in Clause 32 in the following terms:

" 32. And we do further ordain that the said High Court of Judicature at Bombay shall have and exercise all such civil and maritime jurisdiction as may now be exercised by the said High Court as Court of Admiralty, or of Vice-Admiralty, and

also such jurisdiction for the trial and adjudication of prize causes and other maritime questions arising in India, as may now be exercised by the said High Court".

9. In VIDESH SANCHAR NIGAM LTD. v. M.V.KAPITAN KUD AND OTHERS [(1996) 7 SCC 127], the Supreme Court released the foreign ship against whom a prima facie case was made out on condition of depositing a sum of Rs.10 crores and the Ukrainian Government giving an undertaking that in the event of the suit being decreed, they would comply with the decree; and such undertaking was to be for the balance amount of Rs.18 crores and towards costs and other expenses roughly put at Rs.25 crores.

9.1 In MAHADEO SAVLARAM SHELKA v. PUNE MUNICIPAL CORPORATION [(1995) 3 SCC 33], the Supreme Court, in the context of the provisions of Order 39, Rule 1 of the Code of Civil Procedure, held that the pecuniary jurisdiction should not stand as an impediment for the court of first instance in determining damages as part of the adjudication and pass a decree in that behalf without relegating the parties to a further suit for damages. It was observed that while exercising discretionary power, the court should also adopt the procedure of calling upon the plaintiff to file a bond to the satisfaction of the court that in the event of his failing in the suit to obtain the relief asked for in the plaint, he would

adequately compensate the defendant for the loss ensued due to the order of injunction granted in favour of the plaintiff. Even otherwise, the Court while exercising its equity jurisdiction in granting injunction has also jurisdiction and power to grant adequate compensation to mitigate the damage caused to the defendant by grant of injunction. The court, under the circumstances of that case, directed that in the event of the suit being dismissed, while disposing the suit, the trial Court should assess the damages and pass a decree for recovering the same.

10. According to a judgment dated 12.10.1999 of the Bombay High Court (Coram: Y.K.Sabharwal, C.J. (as His Lordship then was) and S.H.Kapadia, J.) in Appeal No.1151 of 1999 in Gemstar Trading v. A.R.A. De Mayo and Another, an order of arrest of the vessel was made upon an undertaking being given in writing to pay such amount as damages as the court may award as compensation in the event of the affected parties sustaining prejudice by the order of arrest. Then, due to the order of arrest, the loss of nearly 2 lakhs per day was claimed to have been suffered and, having regard to the circumstances of the case, the appellant was directed to pay a sum of Rs.25 lakhs as damages computed at rupees one lakh per day for 25 days for which the order of arrest of the vessel was continued and the claimant was held to be entitled to enforce the undertaking in accordance with law.

11. The Bombay High Court, in BANK OF MAHARASHTRA v. M.V. RIVER OGBESE [AIR 1990 Bombay 107], has held that an application for issue of an order of arrest, whether heard ex parte or upon hearing the defendant, is always an application under Rule 941 [applicable under the revised Bombay High Court (Original Side) Rules, 1980] and as such, an undertaking by the applicant was necessary.

12. In the facts of the present case, there is no doubt about the fact that the order for arresting M.V. ASEAN JADE was obtained on such insufficient grounds as could not be sustained afterwards and the ex parte order was obtained and served in such manner that it would necessarily cause loss. Under the above quoted applicable provisions of Rule 367, in absence of any direction in that behalf, the plaintiff was required to give an undertaking in writing to pay such sum by way of damages as the court may award as compensation in the

event of a party sustaining prejudice by the order. This was admittedly not done. And now, without raising such an issue before the learned single Judge hearing the main admiralty suit and the miscellaneous civil application therein, it was sought to be argued that the court ought to have raised an issue regarding damages and allowed the parties to lead evidence in that regard and ought not to have awarded damages while giving reasons for the order vacating and setting aside the order to arrest the ship. Learned senior counsel Mr.Vyas relied upon the following observations in DELHI ADMINISTRATION v. GURDIP SINGH UBAN AND OTHERS [(2000) 7 SCC 296]:-

"31. In our view, if the court allows a writ petition and reasons were to follow later, the first order allowing the writ petition and issuing the writ absolute is the operative order. If reasons therefor are supplied later, as a matter of convenience, the latter order containing reasons cannot go beyond the four corners of the rule absolute already issued."

However, reading the aforesaid order dated 30.6.2000 vacating the order of arrest, it is clear that that was not the final order disposing Miscellaneous Civil Application No.33 of 2000. We do not find anything illegal in the Court's dealing with the other prayer of the applicant while giving reasons for the aforesaid order and disposing and deciding the whole application by the impugned judgment after giving adequate opportunities of hearing to the parties. The ratio of the aforesaid decision of the Supreme Court, therefore, does not apply in the facts of the present case.

13. As for the amount and calculation of damages, it is obvious that the court has awarded compensation for actual damage claimed to have been sustained by the applicant by the loss caused due to arrest of the ship and no amount was awarded as punitive or exemplary damages. As noticed earlier, the details of the claim for damages, howsoever skeletal, were submitted on oath by the applicant and, despite sufficient opportunities, not denied by the appellant. The High Court, in exercise

of its plenary powers, was within its jurisdiction, as adumbrated in M.V.ELISABETH (supra), in awarding compensation as above and nothing was pointed out to suggest that such damages by way of compensation could be awarded only in a separate suit or in a different proceeding. On the contrary, the scheme of the aforesaid Rule and the precedents cited at the bar suggest that the

Court has to, in its original jurisdiction, assess and award the damages when it was found on evidence that wrongful loss was in fact caused due to its order of arrest issued at the instance of the plaintiff.

13.1 The learned counsel for the respondent argued that the power to award damages was restricted by the provisions of Section 95 of the Code of Civil Procedure and cited in support of his submission the judgment of the Supreme Court in BANK OF INDIA v. LEKHIMONI DAS AND OTHERS [(2000) 3 SCC 640]. However, assuming that the provisions of the C.P.C. or its underlying principles were strictly applicable in an interlocutory proceeding in an admiralty suit, the relevant sections of the C.P.C. would be Sections 144 and 151 and, in our view, the Court could have and ought to have awarded full amount in restitution in exercise of its inherent powers and exercise of admiralty jurisdiction. We are supported in our view by the judgment of the Supreme Court in MRS. KAVITA TREHAN v. BALSARA HYGIENE PRODUCTS LTD. [AIR 1995 SC 441].

14. Thus, in the facts and circumstances, the first order vacating the order of arrest could not be faulted

and we find no reason to interfere with the acceptance of the assessment of damages as furnished by the affected party. However, in view of the concession fairly made by the learned counsel Mr.Vakil, as recorded earlier, and the fact that the vessel M.V. ASEAN JADE was actually under the order of arrest, at the most for five days from 27.6.2000 to 1.7.2000, we modify the award of damages so as to restrict it to Rs.13,50,000/-. We, however, order that the amount of Rs.13,50,000/- shall be paid by the appellant (original plaintiff) to the opponent No.1, through its owner, authorised agent or representative, on or before 31.1.2003. If the payment is delayed beyond that date, the amount shall be paid with interest @ 12% per annum for the subsequent period till relaisation. The Letters Patent Appeal (Stamp) No.1369 of 2000 and/or O.J.Appeal (Stamp) No.1369 of 2000 shall not be registered and shall stand disposed. The appeal is accordingly partly allowed with no order as to costs. Civil Application No.52 of 2002 also stands disposed. We place on record the fact of valuable assistance, rendered at the request of the Court, by learned advocate Mr.M.J.Thakore.

Sd/-

(K.R.Vyas, J.)

Sd/-

(D.H.Waghela,J.)

(KMG Thilake)